IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.128 of 2007
SRI NARENDRADEO & ORS
Versus
THE STATE OF BIHAR & ORS

For the Appellants: **Mr. R.K.P. Singh, &**
Mr. Bal Bhushan Choudhary, Advocates.

For the Respondents: **Mr. Anil Kumar Jha,**
Government Advocate.

16 25.09.2008 This Miscellaneous appeal has been preferred against the order dated 16.03.2007 passed by Sri Ajay Nath Jha, Sub Judge I, Hilsa in Title Suit No. 54 of 2006 whereby the application under Order 39 Rules 1 and 2 of Code of Civil Procedure filed by plaintiff-appellants was dismissed by the learned Sub Judge. After preferring the appeal, against the said order, the plaintiff-appellants filed Interlocutory Application no. 115 of 2008 for issuing order of ad interim injunction restraining the respondents (State of Bihar & others) or their agents from going over to the disputed land of title suit no. 54 of 2006 and not to make any construction thereon without resorting to the provisions of the land acquisition. The said I.A. was placed before this court by the office for hearing and while hearing the parties on the said I.A., on 04.02.2008 the following order was passed by this court,

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"With consent of both the parties, I.A. No. 115 of 2008 at Flag 'X' filed

> under the provision of Order 39 Rules 1 and 2 of the Code of Civil Procedure will be heard at the time of admission of this appeal under Order 41 Rule 11 of the C.P.C.".

In view of the above order, both the parties were heard on the said interlocutory application as well as on the merit of the appeal and the order was kept reserved.

2. As per the case of the plaintiff-appellants they had preferred suit bearing Title Suit no. 54 of 2006 for declaration of their title with respect to the suit land described in Schedule 1 to 5 of the plaint as well as for injunction restraining the defendants from making any construction on the suit land by dispossessing the plaintiffs. According to their case, the plaintiffs-appellants belong to three different families. Plaintiff nos. 1, 2 and 4 belonged to one family and plaintiff nos. 5 and 6 belonged to another family and they have been coming in separate and exclusive possession of the suit property as per their respective share. In the old Khatian the suit lands appertaining to khata no. 571 of Mauza Hilsa, Thana No. 177, plot nos. 241, 242, 243, 244, 245, 268, 269, 270, 271, 272, and 296 comprising an area of 17.71 acres cultivable land and 3.21 acres Parti Sahan Land were recorded as "Kaisre Hind Sarkari Paraw" in the Cadestral survey. The above mentioned plots

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have been shown under the occupation of different Raiyats or ex-landlords of the Mauza. Out of the said 17.71 acres of land, 4.71 acres of the lands are involved in the suit. It has been stated that the plaintiffs are either descendants of the recorded tenants or they are the purchasers from the recorded tenants and therefore, they had right, title and interest over the lands and cannot be dispossessed from the land without initiating any land acquisition proceeding. In support of this submission the learned advocate appearing on behalf of the appellants has placed several documents showing transfer of the suit lands to different persons through different registered sale deeds executed by different persons and since those registered sale deeds are very old documents, as such the same cannot be said that the same were created for the purpose of utilizing the same in the suit. The learned advocate further submitted that the term "Kaisre Hind Sarkari Paraw" used in the Khatian does not mean that the suit land belonged to the State of Bihar or the Central Government. The learned Advocate submitted that the sale-deeds and the rent receipts produced on behalf of the plaintiffs will establish that the plaintiffs have got prima facie case in their favour and the balance of convenience lies for

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granting injunction in favour of the plaintiffs. He further submitted that in case the injunction is not granted the plaintiffs will suffer irreparable loss.

3. On the other hand, the learned advocate appearing on behalf of the State of Bihar submitted that in the Cadestral Survey the land has been recorded as “Kaisre Hind Sarkari Paraw” and so, it cannot be settled to the tenants. He further submitted that the State Government is planning to construct I.T.I. over the said land which belonged to the State of Bihar and if injunction is granted then the State will suffer irreparable loss.

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4. Considering the argument of both the sides and after going through the papers produced on behalf of the plaintiffs-appellants it appears that the plaintiffs-appellants have got prima facie case in their favour for grant of injunction but in view of the fact that the land in dispute was recorded in the Cadastral Survey as “Kaisre Hind Sarkari Paraw” and till today no finding of any Civil Court is obtained by the plaintiffs-appellants in their favour that such lands can also be settled to the tenants, I am of the view that the balance of convenience does not lie in favour of the plaintiffs-appellants.

Moreover, it is admitted fact that the State of Bihar intends to construct I.T.I. over the said land and as such I am of the view that if the State Government is restrained from making construction over the land it will cause irreparable loss to the State Government as the I.T.I. is being constructed for the advantage of the general public. In such circumstance, I am of the opinion that at this stage the prayer of the plaintiffs-appellants for restraining the defendants from making any construction over the suit land cannot be allowed unless the plaintiffs obtain a decree in their favour by a competent court.

5. In such view of the matter, this Miscellaneous Appeal is dismissed at admission stage itself with direction to the learned court below to dispose of the suit of the plaintiffs-appellants within six months from the date of receipt of this order for which both the parties have given consent to assist the court for disposal of the suit within the stipulated period.

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(**Syed Md. Mahfooz Alam, J.**)